

Circuit Court for Prince George's County
Case No. CT180354X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2609

September Term, 2018

THOMAS LEE KEYS

v.

STATE OF MARYLAND

Leahy,
Gould,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Gould, J.

Filed: November 8, 2019

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant Thomas Keys was convicted by a jury in the Circuit Court for Prince George's County of various charges stemming from the theft of a vehicle and his subsequent efforts to elude the police.

When his case was called for trial on September 13, 2018, Mr. Keys requested a continuance so that he could replace his attorney due to their alleged failure to communicate. The trial court summarily rejected Mr. Keys' request.

On appeal, Mr. Keys asks:

Did the court err in failing to comply with Maryland Rule 4-215(e) regarding appellant's request to discharge counsel?

Because we answer this question "yes," we reverse the judgment of the circuit court and remand the case for a new trial.

BACKGROUND

In 2017, Jennifer Rivera's car was stolen from the parking lot of a 7-Eleven store. The next day, an officer observed the vehicle, with two passengers inside, run a red light. The police attempted to pull the vehicle over, resulting in a high-speed chase. After briefly losing sight of the car, they discovered it wrecked in the bushes off the side of a road. Mr. Keys, who had been driving the car, exited and attempted to flee the scene. He was arrested. The police discovered the passenger injured outside of the car.

Before jury selection in Mr. Keys' trial began, he and the trial judge had the following exchange:

THE COURT: All right. Mr. Keys, I see you have not changed your clothes. You are not ready for trial today?

[MR. KEYS]: No, I have not even strategized with my lawyer or nothing.

THE COURT: What do you mean by strategized? [Defense counsel] has been in your case for quite some time.

[MR. KEYS]: Right. I have not seen him one time the last four months. Not about this case either.

THE COURT: I truly believe that [Defense counsel] is more [than] prepared to try this case for you, sir. So what is it that you are asking me to do today?

[MR. KEYS]: I want a continuance so I can replace my lawyer.

THE COURT: With what[,] a private attorney?

[MR. KEYS]: If I can try.

THE COURT: No, you can't. Today is your trial date. You either go to trial today with [Defense counsel] or you can try it yourself.

[MR. KEYS]: Okay, I would rather try it myself.

THE COURT: Oh, you will do it yourself?

[MR. KEYS]: I can't subpoena any witnesses.

THE COURT: Let me explain something to you if you decide to proceed representing yourself. The rules of evidence will apply. I know you have not gone to law school, so you don't know the rules of evidence. I will be strictly adhering to the rules of evidence. So it will be necessary for you, sir, to make sure that you know how to select a jury, know when to object to questions that are not proper, how to make an opening statement, how to present evidence, how to make a closing statement. All of that will be something you will assume responsibility for if you do not have [Defense counsel] representing you.

[MR. KEYS]: I understand that, judge. I also think it would be a conflict of interest because I have another case pending today.

THE COURT: You have another case for sentencing, correct?

[MR. KEYS]: And a motion for new trial.

THE COURT: That is fine. It has nothing to do with this.

[MR. KEYS]: In the motion it was for ineffective counsel.

THE COURT: That judge will hear that on your other case. I'm only handling this case.

[MR. KEYS]: Okay.

THE COURT: You will have that opportunity to present that argument. Mr. Keys, you need to change your clothes and proceed to trial today with [Defense counsel]. Do you understand?

[MR. KEYS]: Yes, ma'am.

THE COURT: Now go back there and change.

After changing his clothes, Mr. Keys returned to the courtroom, at which time the trial court confirmed with Mr. Keys that he wished to continue to be represented by his current defense counsel:

THE COURT: Do you understand in terms of having [Defense counsel] represent you and what he can do for you, what a lawyer can do in terms of asking proper questions, protecting your constitutional rights at every stage of this trial, sir? Do you understand?

[MR. KEYS]: Yes, ma'am.

THE COURT: Knowing that, you want [Defense counsel] to represent you?

[MR. KEYS]: Yes.

Mr. Keys was convicted of rogue and vagabond, attempted fleeing and eluding by failing to stop, attempted fleeing and eluding by fleeing on foot, fleeing and eluding resulting in bodily injury, reckless driving, and negligent driving. He timely appealed and challenges his convictions, arguing that the trial court erred by failing to comply with Md. Rule 4-215(e) when faced with his request to discharge his attorney.

DISCUSSION

Standard of Review

“In evaluating the trial court’s compliance with Rule 4-215(e), Maryland appellate courts generally apply a *de novo* standard of review.” Cousins v. State, 231 Md. App. 417, 438 (2017) (citation omitted). “However, a trial court’s determination that a defendant had no meritorious reason to discharge counsel under Rule 4-215(e) is reviewed for an abuse of discretion.” Id. (citation omitted). Here, the record reveals that the trial court violated Rule 4-215(e) by denying Mr. Keys a continuance without considering his potentially-meritorious reason for wanting to discharge his attorney.

Rule 2-415 Requests to Discharge Counsel

Md. Rule 4-215(e) states:

If a defendant requests permission to discharge an attorney whose appearance has been entered, the court shall permit the defendant to explain the reasons for the request. If the court finds that there is a meritorious reason for the defendant’s request, the court shall permit the discharge of counsel; continue the action if necessary; and advise the defendant that if new counsel does not enter an appearance by the next scheduled trial date, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds no meritorious reason for the defendant’s request, the court may not permit the discharge of counsel without first informing the defendant that the trial will proceed as scheduled with the defendant unrepresented by counsel if the defendant discharges counsel and does not have new counsel. If the court permits the defendant to discharge counsel, it shall comply with subsections (a)(1)-(4) of this Rule if the docket or file does not reflect prior compliance.

When determining whether a defendant has given a meritorious reason for discharging his attorney, the circuit court must do more than merely provide a forum for the defendant to explain his rationale. See State v. Graves, 447 Md. 230, 242 (2016).

Rather, where the defendant presents facially meritorious reasons for dissatisfaction with his attorney, the court must also give “careful consideration” to the validity of those reasons. See Hawkins v. State, 130 Md. App. 679, 687 (2000). The record must “be sufficient to reflect that the court actually considered the reasons given by the defendant.” State v. Taylor, 431 Md. 615, 631 (2013) (cleaned up) (quotation omitted); see also Pinkney v. State, 427 Md. 77, 93-94 (2012) (quotation omitted) (noting that under Rule 4-215(e), “[t]he trial judge must give much more than a cursory consideration of the defendant’s explanation”). Where the court needs more information to determine whether a given reason is meritorious or not, it is the obligation of the court, rather than the defendant, to see that such information is provided. See Graves, 447 Md. at 242.

If the trial court finds that the defendant has a meritorious reason for discharging his attorney, it “must grant the request and, if necessary, give the defendant an opportunity to retain new counsel.” Williams v. State, 321 Md. 266, 273 (1990) (citation omitted). If the court finds that the reason is not meritorious, it may: 1) deny the request and continue the proceedings; 2) permit the discharge but require counsel to remain on standby; or 3) grant the request and relieve the counsel of any further obligation. Id. This rule demands “strict compliance,” and a trial court’s departure from its obligations constitutes reversible error. State v. Hardy, 415 Md. 612, 621 (2010).

The Parties’ Contentions

Mr. Keys argues that the trial court committed reversible error when it refused to grant him a continuance to allow him to replace his attorney. Mr. Keys contends that the trial court failed to inquire into his reasons for requesting the discharge, and this failure

was not excused by the fact that he explained to the trial court that he had not strategized or communicated with his lawyer. Relying on Hawkins and similar cases, Mr. Keys contends that because he made a facially meritorious complaint about a lack of communication with his attorney, the trial court was required to inquire further into the circumstances to evaluate the merits of his complaint. And, Mr. Keys argues, the trial court was required to actually consider his complaint, not dismiss it out of hand.

The State points to the fact that Mr. Keys did in fact explain his reasons for wanting to discharge his counsel—that he had not strategized with his counsel nor had seen him in the prior four months—and, citing to the Court of Appeals’ decision in Hardy, 415 Md. at 630, contends that Rule 4-215 required nothing more. Mr. Keys counters that Hardy is inapposite because the request for discharge in Hardy came after voir dire, and therefore Rule 4-215 was not applicable to the request in that case.

Mr. Keys’ Request to Discharge Counsel

An attorney’s failure to discuss a case with his client is a potentially meritorious reason for discharge. See Weathers v. State, 231 Md. App. 112, 139 (2016). The State does not seem to disagree with Mr. Keys’ contention that the essence of his complaint was the failure or lack of communication between him and his lawyer. The disagreement between Mr. Keys and the State comes from their assessment of how the court responded to Mr. Keys’ complaint. A close examination of both the substance and context of the discussion between the court and Mr. Keys is therefore in order.

The court’s colloquy with Mr. Keys occurred right after his case was called for trial. The court began by observing that Mr. Keys had not changed his clothes and asked him

whether he was ready for trial. Mr. Keys responded that he had not strategized with his lawyer. The court asked Mr. Keys what he had meant by that, and Mr. Keys explained that he had not spoken with his counsel in the prior four months. It was at this point—before Mr. Keys even asked for any relief—that the trial court assured Mr. Keys that it “truly believe[d] that [defense counsel] [wa]s more [than] prepared” for trial. The State believes that Rule 2-415 required nothing more from the court.

There are at least two problems with the State’s position. First, the trial court’s response—that defense counsel was well prepared for trial—did not address the substance of Mr. Keys’ complaint. Mr. Keys complained about his counsel’s lack of communication and failure to include him in the strategy discussions; *not* his counsel’s level of preparation. A lawyer is required to *both* prepare for trial *and* communicate with his client; doing one does not excuse neglecting the other.¹ Accordingly, the court’s stated belief that defense

¹ A lawyer’s duty to act with reasonable diligence is embodied in Md. Rule 19-301.3. A lawyer’s duty to communicate with his client is set forth in Md. Rule 19-301.4. Because these distinct duties go to the heart of the attorney-client relationship, a defendant’s request to discharge counsel based on an alleged violation of *either* duty would trigger the trial court’s obligation to inquire further into the facts and circumstances. We neither suggest nor imply that defense counsel in this case has failed to communicate adequately with his client or has otherwise engaged in any misconduct. Nor do we suggest, let alone hold, that if Mr. Smith’s specific allegations are found by the trial court to be true, then his reason for seeking a discharge would necessarily be meritorious. Not all failures to communicate would constitute a violation of Md. Rule 19-301.4 or justify the discharge of counsel. This is where the trial court’s fact-finding and discretion comes into play. It is for the trial court to conduct the inquiry, assess the situation, and then make an informed decision. For example, in Alford v. State, 202 Md. App. 582, 590-98 (2011), the defendant sought to discharge his counsel, alleging a failure to communicate and inadequate trial preparation, among other grounds. After conducting an inquiry, the trial court found the attorney’s representations and explanations to be credible, and the defendant’s allegations to be meritless, and denied the defendant’s motion. Id. at 609.

counsel was adequately prepared does not reflect an adequate inquiry into, or consideration of, the merits behind Mr. Keys’ actual complaints.

Second, the trial court would have had no *factual* basis—at least none evident in this record—to assure Mr. Keys that his counsel was well-prepared for *this* case.² As explained above, the record must be sufficient to show that the trial court “actually considered” the defendant’s reasons for wanting to discharge his attorney. Taylor, 431 Md. at 631 (citation omitted). Proper consideration requires adequate facts—rather than mere speculation—to allow the trial court to make an informed decision. See Wallace v. State, 219 Md. App. 234, 248 (2014) (citation omitted) (a finder of fact may not “resort to speculation or conjecture” for its ultimate conclusion). The record here does not reflect any such consideration.

The State argues that under Hardy, the onus was on Mr. Keys to provide the court with sufficient information about the basis for his complaint about his counsel, and the court was not required to coax the information out of him. The State’s reliance on Hardy is misplaced. In Hardy, the defendant expressed interest in discharging his attorney after jury selection had already begun. 415 Md. at 617-20. The Court determined that Rule 4-215 did not apply, and instead decided the case under a “far more lenient abuse of discretion

² With no other indication in the record, we assume that the trial court based its assurance to Mr. Keys on its personal familiarity with defense counsel and his reputation. We do not suggest that the trial court’s general confidence in defense counsel was not well placed. But, if Mr. Keys had actually complained about his counsel’s level of preparation, the trial court’s confidence in a defense counsel based on the court’s past experience with counsel and/or his reputation, does not replace the need for an inquiry as to defense counsel’s actual preparation for this specific case.

standard.” Id. at 621, 626. Under that standard, the trial court is only required to provide a defendant the “opportunity” or the “forum” in which to explain his reasoning. Id. at 628 (citation omitted). “If the court provides this opportunity, how to address the request is left almost entirely to the court’s ‘sound discretion.’” Id. at 629 (citation omitted).

Here, because the trial process had not yet started when Mr. Keys expressed his desire to discharge his counsel, Rule 4-215(e) applied. See id. at 625 (citing Gonzales v. State, 408 Md. 515, 537 (2009)) (finding that Rule 4-215(e) applies to a defendant’s initial appearance in front of the trial court on the morning of trial). As such, the trial court was required to both inquire into, and meaningfully consider, the reasons for Mr. Keys’ request. See, e.g., Hawkins, 130 Md. App. at 687. This it did not do.

CONCLUSION

When Mr. Keys complained about the lack of communication with his attorney and his attorney’s failure to discuss strategy with him, the trial court under Rule 4-215 was required to inquire into the basis for Mr. Keys’ complaint and specifically consider its merits. Instead, it summarily rejected the complaint based on its assumption that the attorney was well-prepared. Because Mr. Keys was not complaining about his attorney’s preparation, and the record fails to reveal that the trial court inquired into the substance of Mr. Keys’ specific complaints, the trial court failed to comply with Rule 4-215(e). Accordingly, we reverse the judgments of the circuit court and remand this case for a new trial.

**JUDGMENTS REVERSED;
CASE REMANDED FOR NEW TRIAL;
COSTS TO BE PAID BY PRINCE
GEORGE'S COUNTY.**